

For The Northern Mariana Islands
By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

Date: May 11, 2006
Time: 9:00 a.m.

Local Criminal Rule 12.1 provides that “[a]ll motions under Fed. R. Crim. P. 12(b) . . . shall be filed within fourteen (14) days after entry of plea.” The defendant entered her plea to the superseding indictment on December 30, 2005. Furthermore, the Court’s December 30, 2005

1 Order Setting Trial Date (a copy of which is attached) confirmed the pretrial motion deadline of
2 January 13, 2006. The instant motion was filed on March 31, 2006, and is therefore untimely.

3 II. THE COUNTS ARE NOT MULTIPLICIOUS.

4 Defendant argues that Counts Two, Three and Four (all alleging sex trafficking in
5 violation of 18 U.S. C. § 1591(a))¹ and Counts Seven and Eight (alleging foreign transportation
6 of persons in execution of fraud scheme in violation of 18 U.S.C. § 2314) are multiplicitious.
7 Multiplicity occurs when the government charges a single offense in more than one count.
8 Blockburger v. United States, 284 U.S. 299, 304 (1932); United States v. McKittirck, 142 F.3d
9 1170, 1176 (9th Cir. 1998). The test is whether each count “requires proof of an additional fact
10 which the other does not.” Blockburger, 284 U.S. at 304. None of the counts in the superseding
11 indictment are multiplicitious because they allege separate acts, requiring proof of different facts.

12 The defendant argues that the three violations of 18 U.S.C. § 1591(a)(2), which she
13 incorrectly contends criminalize participation in a venture, must be charged in one count. The
14 defendant ignores that Counts Two, Three, and Four charge violations of § 1591(a), *subsections*
15 *(1) and (2)* in the conjunctive.² Subsection (1) criminalizes recruiting “a person.” Likewise,
16 subsection (2) criminalizes benefitting “from participation in a venture which has engaged in an
17 act described *in violation of paragraph (1)*” – in other words, the recruitment, etc., of a particular
18 person. Therefore, the government must prove each count with respect to a particular person,
19 namely the three victims, Lian Wei, Chi Xiumei, and Wei Quixiang. It does not criminalize the
20 venture itself. Instead, the government must prove that the defendant recruited Lian Wei, or

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23 ¹Title 18, United States Code, § 1591(a) prohibits whoever
24 “(1) in or affecting interstate or foreign commerce, or within the special maritime and
25 territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides,
26 or obtains by any means a person; or (2) benefits, financially or by receiving anything of
27 value, from participation in a venture which has engaged in an act described in violation
28 of paragraph (1), knowing that force, fraud, or coercion described in subsection (c)(2)
will be used to cause the person to engage in a commercial sex act....”

²As the defendant concedes, charging two theories in a single count is proper. United States v. UCO, Inc., 546 F.2d 833, 838 (9th Cir. 1976).

1 benefitted from the act of her recruitment; evidence concerning Lian will not suffice to prove
2 that she recruited Chi Xiumei. In fact, the defendant concedes this point, at least with respect to
3 subsection (1), as she does not argue that violations of subsection (1) are multiplicitious.
4 Accordingly, because Counts Two, Three, and Four require proof of different facts, they pass the
5 Blockburger test.

6 Counts Seven and Eight also are not multiplicitious. In Count Seven, the government must
7 prove a foreign transportation that took place on or about October 4, 2004, and in Count Eight
8 must prove a transportation that took place on or about November 11, 2004. The evidence of
9 events on October 4 would not prove what happened on November 11; in other words, the
10 government must prove different facts for each count. In fact, the two Counts actually constitute
11 separate transactions. That the transactions relate to the same scheme to defraud is irrelevant
12 because the crime charged in Count Seven was complete on October 4 and a new crime began
13 with the transportation on November 11. See Blockberger, 284 U.S. at 302 (not multiplicitious to
14 charge separate transactions separately, even when they occurred on the same day).³

15 III. CONCLUSION

16 For the reasons stated above, the Government respectfully requests that the Court deny
17 the defendant's partial motion to dismiss.

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19 Dated: April 20, 2006
20 Saipan, CNMI

21 LEONARDO M. RAPADAS
22 United States Attorney
23 District of the Northern Mariana Islands

24 By: 
25 TIMOTHY E. MORAN
26 Assistant U.S. Attorney

27 ³Again, the defendant implicitly concedes this point when she does not challenge Counts
28 Five and Six, which allege violations of the Mann Act on the basis of the *same transportations*
as Counts Seven and Eight. As they are separate transactions for Counts Five and Six, they are
also separate transactions for the purposes of Counts Seven and Eight.

DEC 30 2005

1 **IN THE UNITED STATES DISTRICT COURT** Clerk
2 **FOR THE NORTHERN MARIANA ISLANDS** District Court
3 for The Northern Mariana Islands
4

5 UNITED STATES OF AMERICA,)
6 Plaintiff,) CRIMINAL CASE NO. 05-00027
7 -v-)
8 MING YAN ZHENG,) ORDER
9 Defendant.) SETTING TRIAL DATE
10 _____)
11

12 **IT IS HEREBY ORDERED** that the jury trial herein shall commence on **MONDAY,**
13 **FEBRUARY 27, 2006 at 9:00 a.m.**

14 IT IS FURTHER ORDERED that pretrial motions shall be filed no later than **FRIDAY,**
15 **JANUARY 13, 2006, pursuant to Local Rule LCrR 12.1.**

16 IT IS FURTHER ORDERED that the following shall be filed with this Court no later than
17 seven (7) days prior to trial:

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- 19 1) Proposed jury voir dire questions;
 - 20 2) A joint exhibit list - (Government's exhibits numbered; Defendant's exhibits
21 lettered)(One original and three copies for the Court);
 - 22 3) A complete set of marked exhibits (with a three copies for the Court);
 - 23 4) Proposed verdict forms;
 - 24 5) Witness lists for purposes of voir dire only. (Witness lists shall include: legal names,
25 aliases, nicknames, place of residence and place of employment),
26 (One original and three copies for the Court);

- 1 6) Proposed jury instructions. (Those jury instructions upon which agreement cannot
2 be reached shall be submitted in a separate packet, together with the objections and
3 authority therefore of each party.)

4 Dated this 30th day of December, 2005.

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ALEX R. MUNSON

Chief Judge